

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK-----x
JASON MITCHELL,

Petitioner,

-v-

THE UNITED STATES OF AMERICA,

Respondent.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 8-17-11
DATE FILED: 8-17-11

-----x
10 Civ. 5570 (JSR)ORDER-----x
JED S. RAKOFF, U.S.D.J.

On July 15, 2011, the Honorable Kevin N. Fox, United States Magistrate Judge, issued a Report and Recommendation ("Report") in the above-captioned matter recommending that the Court deny petitioner Jason Mitchell's petition for a writ of habeas pursuant to 28 U.S.C. § 2255. None of the parties has filed any objection to the Report, and, for that reason alone, the parties have waived any right to further appellate review. See Thomas v. Arn, 474 U.S. 140, 147-48 (1985); Wagner & Wagner, LLP v. Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile, P.C., 596 F.3d 84, 92 (2d Cir. 2010). Accordingly, the Court hereby adopts the Report, and, for the reasons stated therein, dismisses the complaint, with prejudice. Clerk to enter judgment.

In addition, because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253. The Court also certifies that any appeal from this Order would not be taken in good faith, as petitioner's claims lack any arguable basis in law or fact,

and therefore permission to proceed in forma pauperis is denied. See 28 U.S.C. § 1915(a)(3); see also Seimon v. Emigrant Savs. Bank (In re Seimon), 421 F.3d 167, 169 (2d Cir. 2005). Clerk to enter judgment.

SO ORDERED.

Dated: New York, NY
August 15, 2011


~~JED~~ S. RAKOFF, U.S.D.J.